Arbitration Guide
IBA Arbitration Committee

LITHUANIA

(Updated January 2018)

Vilija Vaitkute Pavan
Giedre Aukstuoliene

Ellex Valiunas
Jogailos str. 9
Vilnius
Lithuania

vilija.vaitkute.pavan@ellex.lt
giedre.aukstuoliene@ellex.lt

TABLE OF CONTENTS

I. Background

(i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?

Arbitration in Lithuania is increasingly gaining popularity since adoption of the Law on Commercial Arbitration in 1996 (a new version of the Law was adopted in 2012 seeking to reflect changes of the UNICTRAL Model Law on Commercial Arbitration and recent developments in arbitration practise). Arbitration is preferred to court litigation due to confidentiality and the ability to choose arbitrators with experience and competence in a particular industry.

(ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?

From 2011 to 2016, 149 cases were registered at the Vilnius Court of Commercial Arbitration (VCCA), which is generally considered to be the most popular arbitral institution in Lithuania (www.arbitrazas.lt). According to the statistics of the VCCA, the number of international arbitration cases it handles it every year always exceeds (and rarely equals) the number of domestic cases.

Foreign arbitration institutions, such as the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) and the International Court of Arbitration of the International Chamber of Commerce (ICC), are often opted for in projects of bigger scale by Lithuanian business community.

(iii) What types of disputes are typically arbitrated?

Wide range of commercial disputes is typically arbitrated, including construction, transport, commerce, shareholders disputes, etc.

(iv) How long do arbitral proceedings usually last in your country?

The Arbitration Rules of the VCCA provide that the arbitral award has to be rendered within six months of the time when the case is referred to the arbitral tribunal. Statistics of the VCCA reveal that this timeframe is usually complied with.

(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?

No, parties to arbitration are free to choose their representatives irrespective of their nationality or domicile and any natural person with full legal capacity may be appointed as an arbitrator, irrespective of his or her nationality, unless otherwise agreed by the parties. In all cases the person's written consent to act as an arbitrator is required.

II. Arbitration Laws

(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?

The main law governing arbitration proceedings is the Law on Commercial Arbitration of the Republic of Lithuania, which entered into force on 30 June 2012 and superseded the previous version of 1996. The Law on Commercial Arbitration is mainly based on the UNCITRAL Model Law on International Commercial Arbitration (1985 version, including the 2006 amendments) which is applied when interpreting provisions of the Law on Commercial Arbitration.

When the place of arbitration is in Lithuania, the Law on Commercial Arbitration applies to arbitration proceedings regardless of the citizenship or nationality of the parties and whether the arbitration proceedings are organized by a permanent arbitral institution or on an ad hoc basis. In case of foreign arbitration proceedings, the Law applies to recognition of the arbitration agreement and disputes over its validity, application of interim measures by the courts, and recognition and enforcement of foreign arbitral awards.

The Code of Civil Procedure of the Republic of Lithuania addresses recognition and enforcement of foreign arbitral awards, enforcement of arbitral awards, and involvement of state courts in arbitration-related issues.

(ii) Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?

The Law on Commercial Arbitration of the Republic of Lithuania governs both domestic and international arbitration without making any distinction except for the rules related to recognition and enforcement of foreign arbitral awards.

(iii) What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?

Lithuania has ratified the New York Convention, which entered into force in Lithuania on 12 June 1995, with the reservation that Lithuania will apply the rules of the New York Convention to arbitral awards issued in non-contracting states only on the basis of reciprocity.

Lithuania has also ratified the ICSID Convention, the Energy Charter Treaty and the Convention on Conciliation and Arbitration within the Commission on Security and Cooperation in Europe of 1992.

(iv) Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

Parties to a dispute are free to determine the law applicable to their dispute. A designation of the law or legal system of a state is considered to refer directly to the substantive law of that state (unless otherwise indicated) and not to its conflict of laws rules.

Failing a designation by the parties, the arbitral tribunal shall apply the law which it considers applicable to the particular dispute. In addition, the tribunal must always take trade customs (*lex mercatoria*) into account.

The Law on Commercial Arbitration provides that the arbitral tribunal, in deciding cases, should apply the principles *ex aequo et bono* or act as *amiable compositeur* only if the parties have expressly authorised it to do so.

III. Arbitration Agreements

(i) Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?

The parties may agree to resolve their dispute by including an arbitration clause in the contract or by concluding a separate arbitration agreement. An arbitration clause or arbitration agreement may be concluded for a particular dispute that already exists or for future disputes.

An arbitration agreement must be made in writing, and is considered to be made in writing if (1) it is executed as a document signed by both parties; (2) it is concluded by exchange of letters, including by means of electronic devices if the

authenticity and the completeness of the transferred information can be assured; (3) it is concluded by using electronic devices provided that the authenticity and the completeness of the transferred information is assured and the information stored in such devices is thereafter accessible; (4) it is concluded by exchanging a statement of claim and a statement of defence where the existence of an arbitration agreement is alleged by one party and not denied by the other; or (5) there is other written evidence confirming that the parties have concluded or recognized the conclusion of an arbitration agreement.

The Law on Commercial Arbitration also provides that a reference in a contract concluded by the parties to a document containing an arbitration clause constitutes an arbitration agreement if that document meets the requirements applicable to arbitration agreements, as set out above.

The Law on Commercial Arbitration does not specify the content of the arbitration agreement beyond the requirements described above.

According to the Civil Code of the Republic of Lithuania, an arbitration agreement is subject to the law applicable to the main agreement. If this is not specified, the law of the place where the arbitration agreement was concluded shall apply. If the place cannot be determined, the arbitration agreement shall be subject to the law of the seat of arbitration.

(ii) What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?

The courts in Lithuania follow a pro-arbitration tradition and usually enforce arbitration agreements if there is clear evidence of the parties' intentions to arbitrate. If a court has received a claim regarding a matter subject to an arbitration agreement, the court shall declare the claim inadmissible. If the existence of an arbitration agreement turns up after a claim is declared admissible, the court will not review the merits of the claim.

At the request of a party, an arbitration agreement may be declared null and void by the court on the generally applicable grounds for declaring contracts null and void. Also, the arbitration agreement is considered null and void if it does not adhere to the form requirements in the Law on Commercial Arbitration or if the arbitration agreement is concluded for resolving disputes that are not arbitrable under the said Law. The Law on Commercial Arbitration provides for application of competence-competence principle in Lithuania, meaning that once the arbitral tribunal is constituted, it is the only competent body to decide on the validity of the arbitration agreement.

Lithuanian courts may declare an arbitration agreement null and void *ex officio* only in very exceptional cases where the invalidity of the arbitration agreement is obvious.

(iii) Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?

In general, multi-tier clauses are not very common except in certain industries, such as construction. However, it is not unusual to agree that the parties shall try to solve the dispute by amicable means before resorting to arbitration.

The Law on Conciliatory Mediation in Civil Disputes provides that where parties to a dispute agree to settle the dispute through conciliatory mediation, they must attempt to settle the dispute by this procedure before referring the dispute to court or arbitration. This is the only statutory provision related to the enforceability of multi-tier clauses that provides that commencement of arbitration in violation of such agreement may constitute lack of jurisdiction.

(iv) What are the requirements for a valid multi-party arbitration agreement?

There is no specific regulation on multi-party arbitration agreements; agreements must comply with the requirements listed in Section III(i) above.

(v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?

There are no special legal provisions concerning the unilateral right to arbitrate. However, in principle, agreements entitling one of the parties to choose the dispute resolution method and binding another party to the arbitration agreement should be interpreted according to general contract interpretation rules. Therefore, such agreements, taking into account other relevant circumstances, may be declared unreasonable or even null and void.

(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?

In general, only signatories are considered to be bound by arbitration agreements. However, recent case law demonstrates that Lithuanian courts recognise exceptions to this rule. Accordingly, arbitration agreements may be extended to non-signatories under certain circumstances and particular relationships between the parties.

IV. Arbitrability and Jurisdiction

(i) Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?

As a general rule, all disputes of a commercial nature may be submitted to arbitration. The Law on Commercial Arbitration provides a complete list of non-arbitrable disputes. In particular, disputes arising from constitutional, family and administrative matters, as well as disputes connected with registration of patents, trademarks and service marks, may not be submitted to arbitration. Disputes arising out of employment or consumer contracts may be submitted to arbitration only if the arbitration agreement is concluded after the dispute arises.

Notably, disputes involving state or municipal enterprises, institutions or organisations, except the Bank of Lithuania, may not be submitted to arbitration without the consent of the founder of such entity. The Government of the Republic of Lithuania or its authorised public authority may, under the general procedure, conclude an arbitration agreement concerning disputes arising from commercial or economic contracts to which the Government or its authorised public authority is a party.

Initiating bankruptcy proceedings against a party to the arbitration agreement shall have no impact on the arbitration proceedings, the validity of the arbitration agreement, the possibility to resolve the dispute in arbitration or the competence of the arbitration tribunal to resolve the dispute. However, the party in bankruptcy proceedings cannot conclude a new arbitration agreement.

Though there is no case law on this issue, lack of arbitrability should be considered to be a matter of jurisdiction.

(ii) What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?

The court must declare a claim inadmissible if the parties have concluded a valid arbitration agreement in relation to the dispute.

When deciding whether it should declare inadmissible a claim that is subject to an arbitration agreement, the court may conduct either a *prima facie* review or full review of the arbitration agreement. A *prima facie* review will be conducted only if the arbitration agreement is not ambiguous and the claim before the court clearly covers the subject matter that should be submitted to arbitration according

to the arbitration agreement. If the circumstances are more ambiguous, the court will review and evaluate the circumstances related to its jurisdiction.

The Code of Civil Procedure does not provide time limits for jurisdictional objections to be raised. If the court accepts jurisdiction over a claim but later determines that the claim is subject to an arbitration agreement, the court must declare the claim inadmissible.

Until an arbitration agreement is recognized as invalid by a court, the agreement is still applicable, and the parties are not considered to have waived their right to arbitrate.

(iii) Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?

The competence-competence principle is provided for in in the Law on Commercial Arbitration. The arbitral tribunal has the right to make a decision on its competence to examine the dispute, even if there are doubts about the existence of an arbitration agreement or its validity. To this end, the arbitration agreement, which forms a part of the contract, shall be treated as independent from the rest of the contract.

Arbitrators' decision on jurisdiction can be verified afterwards by the courts in setting aside or enforcement proceedings.

V. Selection of Arbitrators

(i) How are arbitrators selected? Do courts play a role?

The parties are free to agree on a procedure for appointing arbitrators. Failing such agreement, if there are to be three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator. If a claimant fails to appoint an arbitrator in the request for arbitration and fails to appoint an arbitrator within 20 days of submitting the request for arbitration, the chairman of the permanent arbitral institution shall make the appointment. The same applies if a respondent fails to appoint an arbitrator within 20 days of receiving the request for arbitration or if the party-appointed arbitrators fail to appoint the presiding arbitrator within 20 days of their appointment.

If there is to be a sole arbitrator and the parties are unable to agree, he or she shall be appointed, upon request of a party, by the chairman of the permanent arbitral institution.

Lithuania's courts play a role in *ad hoc* arbitration. If a party fails to appoint an arbitrator, the Vilnius District Court of the Republic of Lithuania shall appoint an arbitrator. If the arbitrators appointed by the parties fail to agree on the appointment of the chairperson of the arbitral tribunal, the Vilnius District Court shall appoint the chairperson of the *ad hoc* arbitral tribunal according to the Law on Commercial Arbitration.

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

A person who is approached in connection with his possible appointment as an arbitrator must reveal to the parties, the arbitral institution or the Vilnius District Court any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. This obligation continues throughout the arbitral proceedings.

An arbitrator may be challenged only if there are circumstances that give rise to justifiable doubts as to his or her impartiality or independence or if he or she does not possess the qualifications agreed to by the parties.

The decision of Vilnius District Court rejecting the challenge in *ad hoc* arbitration is rendered in first and last instance.

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

Generally, there are no limitations on who may serve as an arbitrator and any competent natural person, irrespective of his or her nationality, may be appointed as an arbitrator unless otherwise agreed by the parties or specific regulation in particular areas prohibits the person from acting as an arbitrator (for instance, state court judges cannot be appointed as arbitrators in Lithuania)

Under the Law on Commercial Arbitration arbitrators must remain independent and impartial during the arbitration proceedings.

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

There are no specific rules. The IBA Guidelines on Conflicts of Interest in International Arbitration are not mandatory, but are commonly applied in practise.

VI. Interim Measures

(i) Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?

Unless agreed by the parties, the arbitral tribunal may, at the request of a party and upon informing other parties, grant interim measures aimed at ensuring that a party's request or relief will be enforced or that the evidence of the case will be preserved. The arbitral tribunal may grant the following interim measures: (1) a prohibition against concluding agreements or taking certain actions; (2) an obligation of a party to preserve assets related to the arbitration, or to furnish a monetary deposit or bank or insurance guarantee; or (3) an obligation to preserve evidence that might matter to the arbitration. A party may ask an arbitral tribunal to issue preliminary ruling on interim measures *ex parte*.

The decision of the tribunal is binding on the parties. However, if the decision is not observed by a party, the Vilnius District Court shall issue an enforcement order upon the request of the other party.

(ii) Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?

A party has the right to apply to the Vilnius District Court for interim measures or preservation of evidence during any stage of the proceedings. Provisional relief ordered before the constitution of the arbitral tribunal remains in force after the constitution of the arbitral tribunal.

(iii) To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?

Courts may assist the arbitral tribunal or a party (with the approval of the arbitral tribunal) in taking evidence. The arbitrators and parties are allowed to participate in the procedure of taking evidence in the court by giving explanations, asking questions or exercising other rights necessary for the collection of evidence.

Arbitrators do not have the power to compel witnesses to testify before the arbitral tribunal. Therefore, if witnesses fail to appear or refuse to testify, the arbitral tribunal may allow the party requesting examination of the witness to apply to the Vilnius District Court to request examination of the witness according to the Code of Civil Procedure.

Parties are free to resort to courts to apply for interim measures in relation to anticipated or ongoing arbitration proceedings, and the tribunal's consent is not required.

VII. Disclosure/Discovery

(i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?

There is no specific regulation on disclosure or discovery in arbitration except for the general rule that the arbitral tribunal may order any of the parties to submit relevant evidence. Though it is common to agree on application of the IBA Rules on Taking Evidence in International Arbitration, the scope of disclosure/discovery in fact is much more limited than in common law countries.

Additionally, the Law on Commercial Arbitration does not govern pre-hearing contact between the parties, the parties' representatives, experts and witnesses. The parties are free to determine these relations. In the absence of such agreement, the arbitrators may conduct the arbitration proceedings in the manner they consider appropriate.

(ii) What, if any, limits are there on the permissible scope of disclosure or discovery?

Production orders, if any, are usually limited to specific identifiable documents that the requesting party proves is material to the outcome of the case. As stated above, the IBA Rules on Taking Evidence in International Arbitration are usually followed.

(iii) Are there special rules for handling electronically stored information?

There are no specific rules.

VIII. Confidentiality

(i) Are arbitrations confidential? What are the rules regarding confidentiality?

The Law on Commercial Arbitration provides that one of the principles of arbitration proceedings is confidentiality. However, as the law does not specify the content of this principle, it is recommended to agree on the scope of confidentiality if it is important for the contracting parties.

(ii) Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?

There are no specific rules, but such power is conferred by the arbitration law. Normally, trade secrets and confidential information may be protected by an order of the tribunal at the request of a party. Also, the IBA Rules on Taking Evidence in International Arbitration may be applied if agreed by the parties or ordered by the tribunal.

(iii) Are there any provisions in your arbitration law as to rules of privilege?

No rules of privilege are provided in the Law on Commercial Arbitration. However, general privilege rules provided in other national laws can be invoked in arbitration proceedings.

IX. Evidence and Hearings

(i) Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?

As the Law on Commercial Arbitration does not cover evidentiary issues in detail, the IBA Rules on the Taking of Evidence in International Commercial Arbitration are commonly chosen for guidance.

(ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?

In the absence of party agreement, the Law on Commercial Arbitration gives the tribunal the power to conduct the arbitration in the manner it considers appropriate. The tribunal's discretion is only limited by general principles requiring fair treatment, equal procedural rights, autonomy, economy and cooperation. The Law on Commercial Arbitration also provides that the arbitral proceedings shall be adversarial and expeditious.

The parties may agree that the case will be examined without an oral hearing. However, the arbitral tribunal will still hold an oral hearing if requested by any party to the dispute.

(iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?

The Law on Commercial Arbitration does not regulate issues related to witnesses and their testimony in arbitral proceedings. Thus, parties are free to determine the

rules for witness examinations. In the absence of such agreement, the arbitral tribunal may conduct witness examinations in the manner it considers appropriate. Cross-examination and examination by arbitrators are common.

(iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?

There are no specific rules on who can or cannot appear as a witness in the Law on Commercial Arbitration.

In practice, witnesses are usually not sworn in before their testimony, but are informed that under the Criminal Code of the Republic of Lithuania they have to tell the truth. In case of false testimony, a witness shall be subject to criminal liability.

(v) Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative) and the testimony of unrelated witnesses?

There are no formal rules established in this regard. However, in practice the arbitral tribunal has discretion to determine the relevance and weight of the evidence presented.

(vi) How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?

No formal rules regulate the presentation of testimony of expert witnesses. In practice, parties usually submit the written reports of their appointed expert witnesses together with their submissions, and experts usually provide oral testimony during the hearing. There are no formal requirements regarding independence and/or impartiality of expert witness.

(vii) Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?

The Law on Commercial Arbitration provides that, unless the parties have agreed otherwise, the arbitral tribunal may appoint one or more experts to advise on certain issues. However, this is not common. There are no particular lists of experts. All evidence should be evaluated under the principle of ‘free evaluation of evidence’. This principle means that the arbitral tribunal is free to determine

the evidentiary value of evidence presented to it, regardless of whether it has been presented by the parties or by an expert appointed by the arbitral tribunal.

(viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?

Hot-tubbing is used very rarely, if at all.

(ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?

The use of arbitral secretaries is common. However, there are no special rules in this regard.

X. Awards

(i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?

An award of the arbitral tribunal must be in writing and signed by a majority of the arbitrators, with the other arbitrators indicating their reasons for not signing. The arbitral award must state the reasons upon which it is based, unless the parties have agreed otherwise. The arbitral award must indicate the date and place of issuance of the award. The award is deemed to have been made at the location indicated in the award. A copy of the award signed by the arbitral tribunal has to be delivered to each party.

There are no limitations on permissible relief. However, the award cannot contradict public order.

(ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?

Arbitrators cannot award punitive or exemplary damages unless the law applicable to the dispute is not Lithuanian law. However, if punitive damages are awarded, there is a risk that the award will be set aside for violating public policy.

Interest can be awarded, but there is a general rule that arbitrators cannot award compound interest unless certain conditions are met.

(iii) Are interim or partial awards enforceable?

Considering that a partial award is final for the part of the dispute that has been fully resolved, a partial award could be as enforceable as any other final award.

Unless interim awards finally settle an aspect of the dispute, they cannot be enforced.

(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?

Arbitrators have a right to present their separate opinion in writing, which shall be attached to the arbitral award. There are no other specific requirements.

(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?

Awards by consent are permitted in cases where the parties enter into a settlement agreement that is approved by the tribunal in the form of a final award. In an amicable settlement of a dispute, parties may also request the tribunal to terminate the proceedings by an order without issuing a consent award.

Arbitral proceedings may be terminated if the case cannot be examined in arbitration, the dispute has already been decided in court or arbitration, the claimant withdraws its claim or there are other reasons which make further examination impossible.

The arbitral tribunal may also decide to leave the claim unexamined if further examination is temporarily impossible.

(vi) What powers, if any, do arbitrators have to correct or interpret an award?

A party may request the arbitral tribunal to correct any computational, clerical or typographical errors, or any errors of similar nature in the award. A party may also ask the arbitral tribunal to interpret the part of the award that resolves the dispute. Such a request may be submitted by a party within 30 days of receipt of the award. The tribunal shall resolve any issues by rendering an additional award. In addition, the arbitral tribunal may introduce such corrections or interpretations of an award on its own initiative within 30 days of the date of the final award. However, it is forbidden to alter the essence of the arbitral award.

XI. Costs

(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?

Unless otherwise agreed by the parties, the arbitral tribunal shall allocate the arbitration costs between the parties, taking into consideration the circumstances of the case and the conduct of the parties. Thus, arbitrators have wide discretion in

the allocation of costs. However, the principle that the unsuccessful party bears the costs is usually upheld.

(ii) What are the elements of costs that are typically awarded?

Arbitration costs that are allowed to be awarded and typically are awarded consist of arbitrators' fees and other reasonable expenses incurred by the arbitrators; expenses incurred by the permanent arbitral institution and other reasonable expenses as agreed by the parties; expenses reasonably incurred by the parties, including, but not limited to, legal representation costs as well as costs of experts and witnesses.

(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?

The arbitral tribunal is entitled to decide on the arbitrators' fees and expenses when rendering the award. The applicable fees of the permanent arbitral institution, the method for calculating the costs of arbitration, and the procedure for payment and repayment of the costs of arbitration are set out in the rules of the arbitration proceedings or in the agreement between the parties. In *ad hoc* arbitration, such issues shall be settled by agreement between the parties or in the rules applicable to the ad hoc arbitration.

(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?

Yes, see Section XI(i) above.

(v) Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?

There is no separate procedure for appeal of the tribunal's decision on costs. However, the award that contains the decision on costs may be challenged before the Court of Appeal on general grounds (see Section XII below), that is, the tribunal's decision on costs may be challenged on grounds of public order.

XII. Challenges to Awards

(i) How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?

The procedure for challenging an arbitral award is provided by the Law on Commercial Arbitration. A party who wishes to challenge an award may submit an application for setting aside the award to the Lithuanian Court of Appeals.

Arbitral awards may not be reviewed on their merits in Lithuania. Arbitral awards may be set aside if the party submitting the application proves one of the grounds in the following exhaustive list:

1. One of the parties to the arbitration agreement was legally incapable under the applicable law, or the arbitration agreement is not effective under the law applicable to the parties' agreement, or according to the laws of the state in which the arbitral award was made if the parties have not agreed on the law applicable to the arbitration agreement.

2. The party against which the arbitral award is intended to be enforced was not properly notified of the appointment of the arbitrator or the arbitral proceedings, or otherwise was not provided with a possibility to present its case.

3. The arbitral award was made in respect of a dispute or a part of a dispute that was not referred to arbitration. If the part of the dispute referred to arbitration may be separated, that part of the arbitral award resolving the issues referred to arbitration may be recognized and enforced.

4. The composition of the arbitral tribunal or the arbitration proceedings did not meet the agreement between the parties or the imperative provisions of the Law on Commercial Arbitration.

5. The dispute may not be referred to arbitration according to the laws of the Republic of Lithuania.

6. The arbitral award contradicts the public policy of the Republic of Lithuania.

7. In addition, an arbitral award may be set aside by the Court of Appeals of Lithuania *ex officio* if the court finds the circumstances in paragraphs (5) and (6) above.

The application for challenging an arbitral award has to be submitted within one month from the date on which the arbitral award was rendered. The duration of the challenge proceedings is limited to 90 days. The ruling of the Court of Appeals is subject to a cassation appeal.

Challenge proceedings do not automatically stay enforcement proceedings. However, the Lithuanian Court of Appeals, after having accepted an application to set aside an arbitral award, may suspend the enforcement of the award at the request of a party.

(ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?

As a matter of public policy this right cannot be waived as it would be considered to be a restraint on the constitutional right to apply to court.

(iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?

In Lithuania there is no second arbitral instance where arbitral awards can be appealed on substantive grounds. There is also no procedure for appeal to a court.

A party wishing to challenge an arbitral award may submit an application for setting aside the award to the Court of Appeals of Lithuania in accordance with the provisions of the Law on Commercial Arbitration (see Section XX(i) above).

The ruling of the Court of Appeals of Lithuania regarding setting aside or refusal to set aside the arbitral award may be appealed to the Supreme Court of Lithuania according to the procedure established by the Code of Civil Procedure.

(iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?

When asked to set aside an award, the Lithuanian Court of Appeals may, if so requested by a party, suspend the setting aside proceedings for a definite time period so that the arbitral tribunal may resume the arbitral proceedings or take such other action that the Court of Appeals considers would eliminate the grounds for setting aside the arbitral award. Since the Court of Appeals may suspend the setting aside proceedings for a definite time period only if so requested by a party, the court itself may remit the case to the arbitral tribunal only upon the request of the party.

XIII. Recognition and Enforcement of Awards

(i) What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?

Since Lithuania is party to the 1958 New York Convention, an arbitral award rendered in any state that is party to the New York Convention can be recognized and enforced in Lithuania according to the provisions of the New York Convention and the Law on Commercial Arbitration.

The grounds for refusal of recognition and enforcement of the arbitral award are not provided in the domestic law of Lithuania. Thus, the grounds established in Article V of the New York Convention shall apply.

Applications concerning recognition of foreign arbitral awards are examined by the Court of Appeals of Lithuania through written proceedings. The original or certified copies of an award and arbitration agreement must be attached to the application, along with a Lithuanian translation. Ruling of the court shall come into effect from the moment it is made. Once the ruling takes effect, the foreign arbitral award shall be subject to enforcement according to the procedure established in the Code of Civil Procedure. The arbitral award cannot be enforced until the Court of Appeals issues the ruling.

A judgment of the Court of Appeals of Lithuania granting or denying recognition and enforcement of a foreign arbitral award may be appealed to the Supreme Court of Lithuania within one month. The Supreme Court of Lithuania shall be entitled to suspend the enforcement of a judgement or ruling while the case is heard through the cassation procedure.

Notably, as mentioned before, arbitral awards cannot be appealed on substantive grounds in Lithuania, meaning that the Supreme Court of Lithuania may review the award only on grounds for refusal of recognition and enforcement.

(ii) If an exequatur is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?

Arbitral awards made in the Republic of Lithuania can be enforced in Lithuania under the same rules as judgments issued by national courts after obtaining execution writ from the court. Upon recognition by the Lithuanian Court of Appeals, a foreign arbitral award has the same status as a national judgment and is enforced in the manner prescribed by the Code of Civil Procedure.

(iii) Are conservatory measures available pending enforcement of the award?

Yes.

(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

Lithuanian courts follow a strong pro-arbitration tradition regarding recognition and enforcement of arbitral awards. Case law on recognition and enforcement of foreign awards set aside at the place of arbitration is still developing.

(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?

The length of enforcement depends whether the other party objects. A general time limit of 5 years applies for seeking the enforcement of arbitral awards.

XIV. Sovereign Immunity

(i) Do state parties enjoy immunities in your jurisdiction? Under what conditions?

Lithuanian case law confirms that Lithuania follows the restrictive theory of state immunity. Therefore a state enjoys immunity only with respect to sovereign activities and not activities of a commercial nature. The Government of the Republic of Lithuania or its authorized public authority may generally conclude an arbitration agreement concerning disputes arising from 'commercial-economic contracts' to which the Government or its authorized public authority is a party.

(ii) Are there any special rules that apply to the enforcement of an award against a state or state entity?

Limitations apply in respect of the assets against which enforcement may be sought. In particular, an enforcement action against a state or municipal enterprise can be directed only to the monetary amounts that belong exclusively to those entities. If the state or municipal enterprise does not have enough funds, the enforcement shall be sought from the budget of the state or municipality, not exceeding the value of other property that the state or municipal enterprise posseses under trust law.

XV. Investment Treaty Arbitration

(i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?

Lithuania is a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the ICSID Convention, which entered into force in Lithuania on 5 August 1992) and the Energy Charter Treaty (which entered into force in Lithuania on 13 December 1998).

(ii) Has your country entered into bilateral investment treaties with other countries?

Since 1990, Lithuania has entered into 54 bilateral investment treaties.

XVI. Resources

(i) What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?

The Law on Commercial Arbitration of the Republic of Lithuania, English official translation is provided in the website of the Parliament of the Republic of Lithuania: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/97c97a3043b611e4ba35bf67d0e3215e?jfwid=-brx0ub7ru.

(ii) Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?

The VCCA holds at least one conference a year to discuss recent developments in arbitration. This conference, called Vilnius Arbitration Day, is the most important arbitration event in Lithuania, gathering together businesses, law firms, in-house counsel, the judiciary, academics and students. Information about the conference is available at the website of the VCCA: www.arbitrazas.lt.

XVII. Trends and Developments

(i) Do you think that arbitration has become a real alternative to court proceedings in your country?

The use and popularity of arbitration has been promoted in Lithuania by teaching and training the future generation of lawyers, organizing seminars on arbitration for Lithuanian businesses and professionals, and developing legal regulation to

create a strong pro-arbitration environment. As a result, arbitration has considerably strengthened its position during the last decade and has become a real alternative to court proceedings in Lithuania.

(ii) What are the trends in relation to other ADR procedures, such as mediation?

Public awareness of mediation and other ADR procedures is growing, and the number of private mediations is rising. Nonetheless, ADR procedures are still quite new in Lithuania and are only beginning to increase their popularity.

(iii) Are there any noteworthy recent developments in arbitration or ADR?

As stated above, the new version of the Law on Commercial Arbitration was adopted in 2012. It harmonises with the amendments to the UNCITRAL Model Law on Commercial Arbitration, corresponds to global good practices and ensures a good position for Lithuania among the countries which encourage this method of dispute resolution. The working group, responsible for the amendments of the Law, consisted of the highest qualified professionals practicing in arbitration, including but not limited to Ms Vilija Vaitkutė Pavan and Mr Dr Andrius Smaliukas, Ellex Valiunas partners in the firm's Dispute Resolution Practice Group.